



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590



FEB 25 2013

REPLY TO THE ATTENTION OF:

SR-6J

URGENT LEGAL MATTER ---  
PROMPT REPLY NECESSARY

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
7001 0320 0006 0183 3679

Ms. Ellen J. Kullman, President  
E.I. du Pont de Nemours and Company  
1007 Market Street  
Wilmington, Delaware 19898

Re: Special Notice Letter for the Gary Development Landfill Site located at 479 Cline Avenue, Gary, Lake County, Indiana, CERCLIS ID No: IND077005916.

Dear Sir or Madam:

The United States Environmental Protection Agency ("U.S. EPA") has undertaken response actions at the above referenced Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*, as amended ("CERCLA"). These response actions include taking and analyzing samples at and near the Site. U.S. EPA has documented the release or threatened release of hazardous substances, pollutants, and contaminants at or from the Site. U.S. EPA believes the following response activities are necessary at the Site: 1) a remedial investigation ("RI") to determine the nature and extent of the contamination at the Site; and 2) a feasibility study to determine and evaluate alternatives for remedial action at the Site ("FS").

You have been identified as a contact for the Potentially Responsible Party identified on the attached service list. This letter notifies you that a 60 day period of formal negotiations with the U.S. EPA automatically begins with this letter whereby you and other Potentially Responsible Parties are invited to enter into negotiations with U.S. EPA to conduct the RI and FS at the Site. This letter also contains a formal demand for reimbursement of costs that have been incurred at this Site by the U.S. EPA in response to the health and environmental concerns at the Site. This

letter also provides general and site-specific information to assist you in these negotiations.

### **NOTICE OF POTENTIAL LIABILITY**

U.S. EPA has information indicating that you may be a Potentially Responsible Party ("PRP") under Section 107 of CERCLA, with respect to this Site. Under Section 107 of CERCLA, responsible parties include current owners and operators of the Site and former owners and operators of the Site at the time of disposal of hazardous substances, as well as persons who owned or possessed hazardous substances and arranged for disposal, treatment, or transportation of such hazardous substances and persons who accepted hazardous substances for transportation for disposal or treatment to the Site selected by such transporter.

U.S. EPA may perform response actions in response to a release or threatened release of hazardous substances, pollutants or contaminants pursuant to Section 104 of CERCLA. Under Section 107 of CERCLA, U.S. EPA can recover those response costs from responsible parties. Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973, as amended (RCRA), and other laws, U.S. EPA can order, or ask a court to order, responsible parties, to conduct response actions at a site. Failure to comply with an administrative order issued under Section 106(a) of CERCLA may result in a fine of up to \$25,000 per day (adjusted for inflation), under Section 106(b) of CERCLA, or imposition of treble damages, under Section 107(c)(3) of CERCLA. In addition, responsible parties may be liable for damages to natural resources at a Site.

### **SPECIAL NOTICE AND NEGOTIATION MORATORIUM**

Under Section 122 of CERCLA and general settlement authority, U.S. EPA can enter into settlement agreements with PRPs that require PRPs to conduct response actions under Section 104 of CERCLA. U.S. EPA has determined that use of the Section 122(e) special notice procedures specified in CERCLA may facilitate a settlement between U.S. EPA and PRPs for this Site. Therefore, under Section 122 of CERCLA, this letter triggers a 60-day moratorium on certain U.S. EPA response activities at the Site. During this 60-day period, the PRPs, including you, are invited to participate in formal negotiations with U.S. EPA. You are also encouraged to voluntarily negotiate a settlement providing for the PRPs, including yourself, to conduct or finance the response activities required at the Site. The 60-day negotiation period ends sixty days after the date of this letter. The 60-day negotiation moratorium will be extended for an additional 30 days if PRPs provide U.S. EPA with a good faith offer to conduct or finance the Remedial Investigation/Feasibility Study (RI/FS), on or before 60 days after the date of this letter. If U.S. EPA determines that the PRPs have submitted a good faith offer, U.S. EPA will extend negotiations until 90 days after the date of this letter. If settlement is reached between U.S. EPA and the PRPs, the settlement will be embodied in an administrative order on consent for RI/FS.

## **FUTURE RESPONSE ACTIONS**

U.S. EPA plans to conduct the following CERCLA activities at the Site:

1. Remedial Investigation/Feasibility Study beginning on or about 60 days after the date of this letter.

## **WORK PLAN AND DRAFT CONSENT ORDER**

A copy of U.S. EPA's draft administrative order on consent ("AOC") and statement of work ("SOW") are attached. This is provided to assist you and other PRPs in developing a good faith offer for conducting the RI/FS.

## **GOOD FAITH OFFER**

As indicated, the 60-day negotiation moratorium triggered by this letter may be extended for 30 days if the PRPs submit a good faith offer to U.S. EPA. An offer to conduct or finance the RI/FS must include a written proposal that demonstrates the PRPs' qualifications and willingness to conduct or finance the RI/FS and must include the following elements:

1. A statement of willingness by the PRPs to conduct or finance the RI/FS which is consistent with U.S. EPA's statement of work and draft administrative order and provides a sufficient basis for further negotiations.
2. A demonstration of the PRPs technical capability to carry out the RI/FS including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s).
3. A demonstration of the PRPs' capability to finance the RI/FS.
4. A statement of willingness by the PRPs to reimburse U.S. EPA for past costs and costs incurred in overseeing the PRPs' conduct of the RI/FS.
5. The name, address, and phone number of the party or steering committee that will represent the PRPs in negotiations.

If your offer contemplates modifications to the AOC or SOW, you must make revisions to the enclosed proposed AOC and SOW and submit this version to U.S. EPA prior to the expiration of the 60 day negotiation moratorium. Your response should provide reasons for or the basis of such modifications to the proposed AOC and SOW. Major modifications to the AOC and/or SOW may not be considered a good faith offer by U.S. EPA.

## **INITIAL CONFERENCE**

To further facilitate your and other PRPs' ability to present a "good faith offer" within the 60-day time limit, U.S. EPA is organizing an initial settlement conference at the following time and place:

**Date: March 19, 2013**

**Time: 10:00 a.m.**

**Place: U.S. EPA  
Room 611, 6<sup>th</sup> Floor  
77 West Jackson Blvd.  
Chicago, IL 60604**

## **INFORMATION RELEASE**

U.S. EPA is providing the following information as an enclosure with this letter:

1. An updated list of names and addresses of PRPs to whom this notification is being sent. Inclusion on, or exclusion from, the list does not constitute a final determination by U.S. EPA concerning the liability of any party for the release or threat of release of hazardous substances at the Site.

## **DEMAND FOR PAYMENT**

With this letter, U.S. EPA demands that you reimburse U.S. EPA for its costs incurred to date, and encourages you to voluntarily negotiate an administrative order on consent under which you and other PRPs agree to perform the RI/FS.

In accordance with CERCLA, U.S. EPA already has undertaken certain actions and incurred certain costs in response to conditions at the Site. Such costs include, but are not limited to, expenditures for investigation, planning, response, oversight, and enforcement activities.

The cost of the response actions performed at the Site through U.S. EPA funding was approximately \$628,813.29 as of December 31, 2013 (see enclosed Itemized Cost Summary). In accordance with Section 107(a) of CERCLA, demand is hereby made for payment of the above amount plus any and all interest recoverable under Section 107 or under any other provisions of law.

As indicated above U.S. EPA anticipates expending additional funds for the RI/FS. Whether

U.S. EPA funds the entire RI/FS, or simply incurs costs by overseeing the parties conducting these response activities, you are potentially liable for these expenditures plus interest.

### **ABILITY TO PAY - FUTURE FINANCIAL REVIEW**

If your company wishes to settle, but would face a severe financial hardship by remitting the full payment amount, you may request that the U.S. EPA review your financial ability to pay. Under U.S. EPA policy, it is possible in appropriate circumstances for the payment to be made in installments. This may be considered as part of U.S. EPA's financial review. To process a claim of financial hardship, the U.S. EPA will require you to substantiate that claim by submitting detailed financial documentation. A complete description of the U.S. EPA's financial review process is available upon request.

### **PRP STEERING COMMITTEE**

U.S. EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. Establishing a manageable group is critical for successful negotiations with U.S. EPA. Alternatively, U.S. EPA encourages each PRP to select one person from its company or organization who will represent its interests.

### **ADMINISTRATIVE RECORD**

Pursuant to CERCLA Section 113(k), U.S. EPA must establish an administrative record that contains documents that form the basis of U.S. EPA's decision on the selection of a response action for a site. The administrative record files will be available to the public for inspection and comment at:

**The Superfund Records Center  
U.S. EPA, Region 5  
77 W. Jackson Blvd., 7th Floor  
Chicago, Illinois 60604  
Hours: 8:00 a.m. – 4:00 p.m. (Monday – Friday)  
(312) 353-7626**

Copies of documents in the administrative record file will be available for public inspection at the local repository located at:

**Gary Public Library  
Du Bois Branch  
1835 Broadway  
Gary, Indiana 46407  
(219) 886-9120**

## **PRP RESPONSE AND U.S. EPA CONTACT PERSON**

Please contact U.S. EPA in writing within 14 days after the date of this letter to indicate your willingness to participate in negotiations at this Site. You have 60 calendar days from this notice to provide U.S. EPA with a good faith offer, in writing, demonstrating your willingness to perform the RI/FS. You may respond individually or through a steering committee if such a committee has been formed. If U.S. EPA does not receive a timely response, U.S. EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the response, and that you have declined any involvement in performing the response activities.

Your response to this notice letter should be sent to:

Leslie Blake, Remedial Project Manager  
U.S. Environmental Protection Agency – Region 5  
Superfund Division (SR-6J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590  
Phone: (312) 353-7921

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final U.S. EPA positions on any matter set forth herein.

## **RESOURCES AND INFORMATION FOR SMALL BUSINESSES**

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law at <http://www.epa.gov/brownfields/laws/sblbra.htm> and review EPA guidances regarding these exemptions at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/>.

In addition, if you are a “service station dealer” who accepts used oil for recycling, you may qualify for an exemption from liability under Section 114(c) of CERCLA. EPA guidance regarding this exemption can be found on the Internet at <http://cfpub.epa.gov/compliance/resources/policies/cleanup/superfund/>. If you believe you may qualify for the exemption, please contact Jeffrey Cahn, Associate Regional Counsel at (312) 886-6670 or Leslie Blake, Remedial Project Manager at (312) 353-7921 to request an application/information request specifically designed for service station dealers.

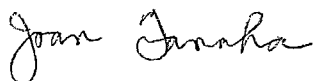
EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which

offer various forms of resources to small businesses. You may inquire about these resources on the Agency's website at <http://www.epa.gov>. In addition, information on contacting EPA's Small Business Ombudsman is available at <http://www.epa.gov/sbo>. Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act (SBREFA), which is enclosed with this letter.

If you have any questions regarding the technical aspects of this letter, please contact Leslie Blake, Remedial Project Manager, at (312) 353-7921, email [blake.leslie@epa.gov](mailto:blake.leslie@epa.gov). If you have an attorney handling your legal matters, please direct his or her questions to Jeffrey Cahn, Associate Regional Counsel, at (312) 886-6670, e-mail [cahn.jeff@epa.gov](mailto:cahn.jeff@epa.gov).

My staff and I look forward to working with you during the coming months.

Sincerely,

A handwritten signature in cursive script that reads "Joan Tanaka".

Joan Tanaka, Chief  
Remedial Response Branch #1

Enclosures:       1. Administrative Order on Consent  
                      2. Statement of Work  
                      3. SBREFA Fact Sheet  
                      4. PRP List  
                      5. Itemized Cost Summary

cc:     Mr. Robin Burr  
          Operations Assistant  
          U.S. Department of Interior  
          Office of Environmental Policy and Compliance  
          Custom House, Room 244  
          200 Chestnut Street  
          Philadelphia, PA 19106-2904

          Scott Pruitt, Field Supervisor  
          U.S. Fish and Wildlife Service  
          620 South Walker Street  
          Bloomington, Indiana 47403-2121

          Nick Heinzelman  
          Indiana Department of Natural Resources  
          402 West Washington Street, Room 255L  
          Indianapolis, Indiana 46204

          Annette Trowbridge  
          Environmental Contaminants Program Coordinator  
          U. S. Fish and Wildlife Service, Region 3  
          5600 American Boulevard West, Suite 990  
          Bloomington, Minnesota 55437-1458

          Stephanie Andrews  
          Senior Environmental Manager  
          Indiana Department of Environmental Management  
          Federal Programs Section  
          100 North Senate Avenue  
          Indianapolis, Indiana 46204-2241



Lisa McCoy  
Office of Legal Counsel  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, Indiana 46204-2241

### PRP List

1. American Chemical Service, Inc.  
Attn: Mr. Thomas Froman  
420 S. Colfax Avenue  
Griffith, Indiana 46319
2. Borg Warner Transmission Systems, Inc.  
c/o Schiff Hardin, LLP  
Attn: Joshua More  
233 South Wacker Drive, Suite 6600  
Chicago, Illinois 60606
3. BP America, Inc.  
Attn: Douglas S. Reinhart  
Senior Counsel  
BP Legal  
150 W. Warrenville Road, Mail Code 200-1W  
Naperville, Illinois 60563
4. Brandenburg Industrial Services Company  
Attn: Ms. Susan E. Brice  
Bryan Cave LLP  
161 N. Clark Street  
Suite 4300  
Chicago, IL 60601
5. Ms. Ellen J. Kullman, President  
E.I. du Pont de Nemours and Company  
1007 Market Street  
Wilmington, Delaware 19898
6. Georgia-Pacific LLC  
Attn: John C. Bottini  
Senior Counsel - Environmental  
133 Peachtree Street, N.E.  
43rd Floor  
Atlanta, Georgia 30303
7. Mr. James Nowacki  
148 North Hancock Street  
Gary, Indiana 464031

8. Union Carbide Corporation  
c/o The Dow Chemical Corporation  
Attn: Ms. Shannon S. Callahan  
100 South Independence Mall West  
Philadelphia, Pennsylvania 19106-2399
9. Mr. Kenneth P. Fischl, President  
Union Tank Car Company  
181 W. Madison Street, 26<sup>th</sup> Floor  
Chicago, Illinois 60602
10. Mr. D M James, President  
Legacy Vulcan Corporation  
(f/k/a) Vulcan Materials Company  
1200 Urban Center Drive  
P.O. Box 385014  
Birmingham, Alabama 35242-5014
11. Waste Management of Indiana, Inc.  
d/b/a: Calumet Waste Systems, Inc.  
Attn: Francis Chin, Senior Legal Counsel  
1001 Fannin, Ste 4000  
Houston, Texas 77002